

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 296 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASLAM YUSUFBHAI MIR

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of Order: 04/07/97

ORAL ORDER

Rule. 1d.APP Mr.S.T. Mehta waives the service of Rule.

Neither on point of facts nor on point of law, there is substance in the revision application.

The ld. Addl. Sessions Judge, Rajkot, was moved by way of three Miscellaneous Applications Nos. 704 of 1997, 705 of 1997 and 713 of 1997 in connection with different accused, when the ld. JMFC, Rajkot City, as per Annexure.C, page no.11 declined to grant remand, by order dated 16.6.1997, page no.14. Unfortunately, the ld. JMFC has not cared to give any reason and the request has been brushed aside by paragraphs at page nos.13 and 14. The matter was elaborately argued before him in those three applications and after considering the rival contentions and considering the decisions cited before him, the ld. Judge has proceeded to grant the request for remand of three days, which at the request of the present applicants was also stayed for a period of one week, ending yesterday.

As the matter is pending investigation and as subsequent trial will also follow, I do not enter into the merits of the case because it may prejudice the defence and it may also come in the way of the parties to the prosecution. However, I was carried through the order of the ld. Sessions Judge and I have also read myself the same and I am satisfied that the findings given therein cannot be said to be improper or wrong.

Two decisions of this Court were relied upon before the ld. Judge. Out of the said decisions, one rendered in Criminal Revision Application No. 436 of 1991 was pressed into service before me also, on the basis that the accused have already stated categorically to the police in course of investigation and have also stated on oath by affidavit that, they know nothing about the matter and, therefore, it is not a case where the order of remand could have been passed.

No doubt, in the said decision dated 5.4.1991 in Criminal Revision Application No. 436 of 1991, views on the aforesaid line have been expressed, but by very nature of the case, when it is under investigation, it will be only on the basis of the facts and, therefore, each decision on the point can never lay down the law.

So far as the request for remand is concerned, it has to be considered on the basis of facts and circumstances revealed before the concerned Magistrate or the Judge, as per the police papers, diary and other related matters. When these are the material required to be considered and that very material has been considered by the ld. Addl. Sessions Judge in the impugned order, it cannot be said to be that, he has wrongly exercised

either discretion or jurisdiction.

An attempt was made out by way of submission on the basis of the provisions of Section 167(2) of Code of Criminal Procedure that, after the passage of first 15 days of investigation, no remand order could be passed. Reading of the decision rendered in the case of CENTRAL BUREAU OF INVESTIGATION, SPECIAL INVESTIGATION CELL-I, NEW DELHI, APPELLANT v. ANUPAM J. KULKARNI, RESPONDENT, AIR 1992 S.C. 1768, as well as the said provision clearly make out that the period of 15 days is nothing else, but the total period of remand to the police custody that can be given either by an individual order or by different orders. May be, by one Magistrate or more than one, the limit is prescribed with regard to the total period of remand and not with regard to the passage of time. This decision, therefore, does not help the applicants.

The net result is that, the present revision application fails and the same is rejected. Rule is discharged.
